STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC Communications, Inc., SBC Delaware Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, And Ameritech Illinois Metro, Inc.	)	ICC Docket No. 98-0555
Joint Application For Approval Of The Reorganization Of Illinois Bell Telephone Company d/b/a Ameritech Illinois, And The Reorganization Of Ameritech Illinois Metro, Inc. In Accordance With Section 7-204 Of The Public Utilities Act And For All Other Appropriate Relief.	)	

NEIGHBORHOOD LEARNING NETWORKS' POST-HEARING BRIEF ON REOPENING AND PROPOSED ORDER

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July 28, 1999

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SUMMARY OF ARGUMENT

This Commission stands at a crossroads. Almost 9% of Illinois residents are without basic telephone service, and Illinois has watched its service suffer the greatest percentage decline in service among the fifty states. This Commission must decide whether this merger will help or hurt those people and others who are underserved.

The issue is pressing, because new telecommunications technologies are replacing traditional ones, and there Illinois is even worse shape. The technological "haves" in Illinois are 10 times more likely to have access to computers, modems, and the Internet than the "have nots." The "haves" with Internet access at home and work find such technologies as much as 100 times more accessible. The "have nots" sit on the other side of the "digital divide." Allowing the digital divide to grow could have devastating consequences for Illinois residents who need high-technology skills and businesses who need people with those skills.

Now, SBC and Ameritech ask this Commission to approve a merger that will create a telecommunications behemoth, one that will focus on big business and digital-age communications and shift control for Illinois' incumbent carrier to Texas. What these Joint Applicants have failed to do is explain how this merger will affect those Illinois residents who do not have basic telephone service and who have not been able to enter the digital age. Even after this Commission reopened the hearing to learn more about the effect of this merger on competition, the Joint Applicants have offered no evidence that the merger will not adversely affect traditionally underserved communities. They offer no evidence on what will be done to restore telephone service to those without it, when and how digital subscriber lines will reach small businesses, how much revenue is expected from telemarketing efforts to sell caller-ID and telephone blocking services to those in low income census tracts, which regulated telephone services are to be reclassified as "competitive," and – perhaps most fundamentally – when competitive suppliers will reach the underserved markets.

What should this Commission do? First, it should provide to Illinois underserved markets the type of programs California customers received. In 1997, as part of its review of the SBC/PacTel merger, the California Public Utilities Commission required the SBC/PacTel to create an $82 million fund to assist in educating and bringing into the digital age "underserved communities" – the elderly, physically handicapped, language handicapped, immigrants, certain categories of inner city and rural markets, and small businesses.

Second, this Commission should approve the merger only with the conditions proposed by the Federal Communications Commission built into its order. It should expand those conditions to provide that there shall be a three-year offering window for promotional resale discounts and end-to-end UNE combinations, to assure that all Illinois customers have multiple suppliers to benefit from a competitive marketplace. Both the California program (along with other similar programs) and the FCC conditions are outlined in a proposed set of conditions in Section IV of this brief.

The savings provision in the Illinois merger statute provides the mechanism to fund this program. "Underserved markets" and Illinois residents without telephones are not "special interests" as has been suggested, but a significant part of the markets under the watch of this Commission. Instead of scuttling savings from the merger in nickel and dime refunds to ratepayers, the order should fund programs to stimulate demand and bring competition to all markets in Illinois. Shareholders will receive $13.2 billion from this transaction. Less than 1/2 of 1 percent of – the $60 million in savings – should be used to correct the negative consequences of this merger on certain markets and bridge the digital divide.

ARGUMENT

This Commission has jurisdiction over and a responsibility to "underserved markets" as defined in the record. Despite ample opportunity, the Joint Applicants have produced no evidence to prove that this merger will not adversely impact these markets. Indeed, the evidence presented by various Intervenors shows that it will. A proper allocation of savings and the imposition of reasonable conditions can substantially alter these adverse conditions. These points are addressed below.

I. This Commission Has Jurisdiction Over And The Responsibility To Protect "Underserved Markets."

This Commission properly should address the effect of this merger on competition in "underserved markets" as defined in the record.

First, the record in this docket provides a framework for making a determination as to the effect of this merger on "underserved markets," "underserved communities," and "disadvantaged communities." As explained below, these terms are used interchangeably to refer to particular markets and communities that have traditionally received less telephone service that other markets and communities, and which have only one telecommunications supplier. (See, e.g., Samuelson Reopening Direct at 3;[1] Tr. 2008-09 (Kahan Cross).) These markets have been recognized in other merger proceedings. For example, in the Pacific Telesis/SBC merger in California, a Community Partnership Agreement defines "underserved communities" as "low-income, inner-city, minority, disabled, and limited-English-speaking communities and low-income seniors, throughout the various geographic (urban and rural)

[1] Throughout this brief, written submissions are referred to in this format and references to the transcript are to "Tr."; references to the Post Exceptions Proposed Order are to "PEPO"; and references to involved parties are to familiar names and abbreviations.

regions of California." (Samuelson Reopening Direct Ex. D at 2.) Evidence presented in the record has referred to the effect this merger will have on these markets.

Second, the statute's language makes clear that it requires focus on particular markets or classes of customers in evaluating the impact of the merger. Section 204(b)(6) requires as a prerequisite to approving the merger that this Commission determine that "the proposed reorganization is not likely to have an adverse effect on competition in those markets over which the Commission has jurisdiction." 220 ILCS 5/7-204(b)(6) (emphasis added). Section 204(f) requires just "conditions or requirements . . . to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f) (emphasis added).

That conditions can be set to protect classes of customers likely harmed by the merger is accepted. For example, the ICC staff has taken this position. The Hearing Examiners reviewed without questioning its propriety the Staff's recommendation that the reorganization be conditioned on advancements in and improvements for "access to telecommunication services for people with disabilities." (PEPO at 10 (emphasis added).) Also, the Staff has recommended "that the proposed merger be conditioned on SBC's commitment to focus equally on all classes of customers, and file annual reports detailing how the merged company has met its commitment to equally serve the residential, small and medium business customers." (PEPO at 10 (emphasis added).)

Indeed, the Hearing Examiners have specifically recognized the Commission's jurisdiction over similar classes of customers, addressing issues relating to "small business and residential customers [versus] large business customers" and agreeing that "[t]he goal is to provide superior service to all classes of customers." (PEPO at 15 (emphasis added).)

Thus, the "underserved markets" defined in the testimony are a proper subject of this Commission's decision-making authority. The Joint Applicants have had the opportunity to address the effect of the merger on these markets, twice, and they bear the burden of proof as to the effect of the merger on them.

This Commission has a responsibility to these underserved markets. In January of 1999, James Kahan summarized the issue squarely. When asked a question concerning the importance of having telecommunications providers participate in mitigating the digital divide, he replied:

> <u>That's a public policy issue that the Commission - the ICC in Illinois should look at.</u> [I]t's a very valid concern. We clearly, if we're not careful, are going to end up with a society of people that have access to the information and those that don't. And that has serious implications not just to the telecom industry. The implications to the telecom industry are very small compared to the implications overall. <u>But those are for policymakers to decide and evaluate, not for companies.</u>

(Tr. 449 (Kahan Cross).) In other words, if the underserved markets must depend on anyone for help, they must depend on this Commission.

II. The Merger Will Adversely Affect Competition In Underserved Markets.

The record on reopening demonstrates that merger will further widen the gap between the technological haves and have-nots and further reduce Illinois' progress in bringing telecommunications services to its residents and businesses. As explained below, the merger will adversely affect competition in underserved communities. Despite ample opportunity to do so, the Joint Applicants have not presented evidence showing that the merger will have no significant adverse effect on competition in underserved markets. Rather, evidence provided by the Intervenors shows the opposite – that the merger will have such an effect. Allowing the merger to further widen the digital divide in Illinois would be terrible for everyone.

A. The Joint Applicants Have Failed To Show The Absence Of An Adverse Effect On Competition In Underserved Markets.

The Joint Applicants are aware that the effect of the merger on underserved markets is an important issue before this Commission – they were aware of it both before this docket opened and before the reopening of testimony. Prior to this proceeding, in the California merger in April 1997, SBC and PacTel committed $82 million to programs designed to assist underserved markets in that area. (Tr. 2007-08, 2013 (Kahan Cross).) In Ohio, SBC and Ameritech "voluntarily" contributed approximately $7.5 million to a consumer education fund, a community technology fund, and learning centers and related services; they have made a similar pledge here. (Samuelson Reopening Direct at 12-13.) Moreover, during the first phase of this docket, in January, James Kahan's stark testimony about the risk of creating a society of information haves and have nots revealed that the Joint Applicants were aware of the problem. (See Tr. 449 (Kahan Cross).)

Nonetheless, mysteriously the Joint Applicants have remained silent on the issue. Indeed, on cross-examination Mr. Kahan was unable to point to evidence of the effect of the merger on competition in underserved markets, speculating only rate protection and competition generally. (Tr. 2010-13.) The Joint Applicants' silence on this issue, apart from constituting a failure to establish no adverse effect, is a tacit admission that the merger will cause underserved markets to fall further behind.

B. The Evidence Before This Commission Shows The Opposite: This Merger Will Have A Significant Adverse Effect On Competition In Underserved Markets.

The evidence highlights two reasons why the merger will worsen competition in underserved markets. SBC/Ameritech, a larger player, will have more resources to resist entry of CLECs, which will force CLECs to more narrowly focus their efforts on the most lucrative markets. Additionally, the Joint Applicants' proposed commitment to underserved markets – little more than a charitable drop in the bucket – reflects that the would-be combined entity has an inadequate focus on the most pressing problem Illinois faces.

The first reason to believe the merger will hurt underserved markets is not only obvious, but a lesson from recent history. No one seriously believes that SBC/Ameritech combined will be a less formidable competitor. Instead, it will be a much larger and more powerful entity. While the Joint Applicants feel they have proposed conditions to address competition generally, they have not addressed the particular harm that will befall underserved communities. Each of the CLEC witnesses testifying in the reopening proceedings expressed difficulty in securing interconnection agreements with and otherwise cooperating with the incumbent carrier. (See Smoot Reopening Direct; Conn Reopening Direct; and Deanhardt Reopening Direct.) Making the point clear, on cross-examination Mr. Deanhardt of Covad admitted that CLECs entering into a state do so by targeting on the most lucrative parts of the market and that the merger would cause CLECs to focus more narrowly on lucrative markets to the disadvantage of underserved markets, thus delaying roll-out to those markets. (Tr. 2534-37, 2589-90 (Deanhardt Cross).)

Experience shows the obvious to be true. Don Samuelson pointed out the Telecommunications Act was passed three years ago and there has been no significant move into the underserved markets in Illinois. (Samuelson Reopening Direct at 27.) Vincent Gilbert, Governor Edgar's appointed Small Business Utility Advocate for the State of Illinois, predicted that the merger will have a "devastating impact" on small businesses if the merger is not conditioned so as to address the concerns of the digital divide. (Tr. 2915 (Gilbert Cross).) Joint Applicants offer no contrary testimony. In fact, David Gebhardt admitted:

> It is my expectation that any services which remain noncompetitive will be the services most underpriced relative to cost, e.g., residence network access lines in high cost areas or services provided to customers who make little use of the network. In these instances, competitors have no economic incentive to provide alternative services. Logically, market pressure to reduce rates will occur on higher margin services and in connection with communications-intensive customers.

(Gebhardt Reopening Rebuttal at 5.)

The second reason to believe the merger will hurt underserved communities comes from the Joint Applicants themselves. Their commitment of $7.5 million to underserved communities in Illinois shows a lack of concern toward underserved markets in Illinois. In the California merger between SBC and Pacific Telesis, SBC/PacTel entered into a Community Partnership agreement under which they contributed $50 million to form a community technology fund to promote access in underserved communities, an additional $27 million to the fund under a challenge grant, and $5 million for additional programs. (Samuelson Reopening Direct at 10.) Like Illinois, California has a savings provision in its merger statute, which requires that the savings resulting from a merger be determined and allocated. (Id. at 9-11) The California PUC allocated its savings so that 50% went to ratepayers and 25% of that amount went to programs provided by the California Community Partnership. (Id. at 9-11).

SBC and Ameritech have offered $7.5 as a voluntary contribution here, which is at the level of the amount devoted to community funds made in the merger in Ohio, a state which, unlike California and Illinois, lacks a merger savings provision. (Samuelson Reopening Direct at 12-13.) Mr. Gilbert explained the significance of the relative sizes of the contribution in California and the proposed contribution here:

> I think those proposals are weak at best. We have had many conversations with Doug [Whitley], the president of Ameritech. I led a group in to see Mr. [Whitley] in 1996, which is memoralized in writing. And at that point in time, I didn't think that Ameritech's commitment to the underserved and disadvantaged communities here in Illinois was sufficient. And I certainly don't think the $7 million that they have proposed in those various proposals is a good proposal in consideration of the over $100 million commitment that SBC and PacBell made in California.

(Tr. 2920 (Gilbert Cross).) Asked to explain the difference between Illinois and California, the Joint Applicants could not offer much other than they feel in light of the overall "package" the amount is "fair and reasonable." (Tr. 2015-17 (Kahan Cross).) When asked by Hearing Examiner Moran whether the difference between Illinois and California is that the California merger involved less costly conditions, James Kahan admitted:

> I would say that's part of it. But the commission in California expressed that this was important – this was a higher prior[ity] to them than promotional discounts to CLECs. So if you sat in on this debate in California, the importance of the different issues were different. We are responsive to the needs of California. Just like we are trying to be responsive to the needs of the Commission here.[2]

(Tr. 2018 (Kahan Cross).) In short, the Joint Applicants perceive that this Commission cares very little about the needs of underserved communities and have tailored their conditions related to underserved communities appropriately. Underserved communities are not a priority because no one has made them a priority.

C. The Adverse Effect On The Underserved Markets Will Have A Significant Adverse Effect On Illinois.

Already, Illinois has fallen far behind other states in providing basic telephone service to many of its residents. Don Samuelson, in uncontroverted testimony, explained:

> There is a "digital divide" in the Chicago metropolitan area and the State of Illinois. At the basic phone service level, almost 10% of the housing units in Illinois are without phone service. As of March, 1999, Illinois was the sixth from the bottom among the 50 states.

[2] Nowhere do the Joint Applicants offer any figures to back this assertion.

(Samuelson Reopening Direct at 4.) In fact, Illinois is losing ground. Samuelson noted that Illinois "had the greatest percentage change in the country from 1983 to 1999, losing 3.8% from 95% to 91.2%." (Id.)

This divide is even worse with respect to the new telecommunications services. For the most prominent of these new services, the Internet, Illinois residents in the upper third of the income scale or with a college education are 10 times more likely than others to use the Internet and, with easier access including home and work computer usage that provides 10 times the access, may have a 100 to 1 edge over those who are dependent on schools and libraries. (See Taylor Reopening Direct at 8.)

The impact of leaving a significant percentage of people and small businesses behind would be significant. Most obviously, small businesses need access to broad band services, DSLs, T1 lines, satellite communications, and other communications media that larger businesses now take for granted. (Tr. 2915 (Vincent Cross).) Less obviously, but equally important, Illinois needs a work force that can support information economy businesses so that it can compete in retaining those businesses against the competing information economy centers, such as Silicon Valley; North Carolina's Research Triangle; Austin, Texas; Manhattan's Silicon Alley; Boston's Route 128; and Cambridge, UK. (Samuelson Reopening Direct Ex. B at 10-11.)

Bridging the digital divide is not charity. It is vital to Illinois' economic health in the information economy. The importance of providing access to next-generation communication devices cannot be understated. Don Samuelson observes that today workers need technology skills and businesses need skilled workers, both of which are important to Illinois' future. (Samuelson Reopening Direct at 5.) Commerce Secretary William M. Daley said: "We must ensure that all Americans have the information tools and skills that are critical for their participation in the emerging digital economy." (Gilbert Cross Ex. 2.)

III. The Commission Should Find That There Are Substantial Savings Resulting From This Merger And That 100% Of The Savings Should Be Allocated To The Ratepayers.

A. The Commission Should Conclude That This Merger Will Generate Approximately $125 Million Of Annual Savings, For A Period Of No Less Than Five Years.

Section 7-204(c) requires that the Commission rule on the allocation of any savings resulting from this merger. Although the Hearing Examiners have described the interpretation of Section 7-204(c) in this merger as a matter of first impression, they determined that it does apply, that "savings" means "a reduction in costs or expenses" (not "revenue enhancements"), and "that the Illinois statute leaves the allocation decision to the Commission's discretion." (PEPO at 83-86.)

David Gebhardt testified that SBC/Ameritech would realize $31 million in savings for Illinois. (Gebhardt Reopening Direct at 13.) He reached this number by allocating $90 million of the $1.43 billion[3] in annual savings to Illinois intrastate operations, with a corresponding $67 million in costs to generate the savings:

> The $31 million represents the net present value of the after tax cash flows associated with the expected expense savings netted against the expected costs incurred to achieve the savings in the first three years following the merger consummation.

(Id.)

[3] SBC/Ameritech have argued throughout these proceedings that the affidavit Mr. Kaplan supplied to the FCC was the basis for their "estimate of annual recurring cost savings and the implementation costs necessary to achieve those savings . . . ." (Id. at 7-8.) They argue that it will take three years to achieve the savings objectives, that there would be $1.43 billion in annual savings, and that "implementation costs of $1.45 billion would be necessary during the initial three-year period to achieve the recurring cost savings." (Id. at 8-9.) The net effect would be negative savings in the first year and positive savings in the second and third years, at which time an annual "run" rate amount of $1.43 billion would be achieved each year thereafter. (Id.)

This number is unfounded. First, all of Gebhardt's actual economic assumptions related to savings and the costs necessary to generate the savings has come from a single individual, Mr. Kaplan, who performed all of the analysis of estimated savings and costs and summarized his analysis in an affidavit prepared in the summer of 1998. (Tr. 2098-2104 (Gebhardt Cross).) Gebhardt did not perform an analysis of the savings for Illinois. (Id.) Kaplan was not available for cross-examination, and there has been no independent verification of the underlying facts and assumptions upon which Gebhardt relied. (Samuelson Reopening Direct at 25.) This was a significant part of the information sought by the Commission when it reopened these proceedings. Nothing new has been provided.

Second, Gebhardt rested his conclusions on a baseless assumption that Illinois will see competition for Ameritech Illinois' services within three years after the merger is consummated. (Tr. 2108-10 (Gebhardt Cross).) He made this assumption, even though three years after the Telecommications Act of 1996 Ameritech faces what he admits is only a "small" amount of competition for its existing lines. (Tr. 2112-13.) In fact, Ameritech controls 96.84% of the market and 99.78% of the facilities based traffic. (PEPO at 35.) The Hearing Examiners concluded that the Illinois market is not competitive now, nor will it be in the near future. (PEPO at 61.)

Third, when asked by the Commission to provide more detailed explanations of their savings analyses and calculations, SBC/Ameritech provided no new information, but simply relied on Kaplan's economic projections and Gebhardt's allocations. Needless to say, the Joint Applicants have every incentive to understate the number. (Samuelson Direct on Reopening at 26.)

A more reasonable number is $100 million per year. SBC's Chairman Whitacre, in his April 14, 1999 Business Week cover story, estimated recurring savings of about $1.4 billion per year. (Samuelson Reopening Direct at 26; see also Tr. 2108-09 (Gebhardt Cross); Gebhardt Reopening Rebuttal at 22.) Multiplying this number by 8.75% (Illinois regulated revenue percentage, which the GCI Intervenors have argued is 12%), the result is over $100 million in annual savings – approximately $125 million per year. (See Samuelson Reopening Direct at 26.) The 5.6-year savings period estimated in California is a more reasonable but still conservative number. (Id.) The resulting savings would be approximately $700 million in Illinois over those 5.6 years.[4] Samuelson explained:

> No evidence has been introduced in the record as to the circumstances of these markets today, or of the likely impact of the merger on services, competition or rates in the future. There has been no significant competition for their business since TA '96 was passed three years ago. It seems highly unlikely that a competitive marketplace will occur for the business of these markets at the end of the three years proposed by Ameritech/SBC for the calculations of savings. It is Ameritech/SBC's burden to prove the various elements of their case, including the existence of a multi-supplier marketplace for the achievement of a competitive marketplace for the various customer markets they serve. This burden has not yet been met.

(Id. at 27.)

Gebhardt's objections to these arguments are meritless. First, he fails to offer any reasonable justification for his assertion that the savings flow-through provision of the merger statute does not apply to a price regulated company. (Gebhardt Reopening Rebuttal at 22.) The Hearing Examiners have already decided to the contrary. (See, e.g., PEPO at 84.) Second, he offers an even less compelling argument for using a three-year time frame: that it ends the same

[4] Indeed, it is possible that the savings would run past year three, while the costs of generating them would take place entirely within the first three years. This would create a windfall for SBC/Ameritech.

year (2002) as the California 5-year period. (Id. at 23.) An equally compelling argument would be that that 3 is a magic number. Neither has any logical foundation.

The Commission was sufficiently interested in a detailed explanation of these economic assumptions to suggest that the record be reopened so that a "total and complete breakdown detailing the Joint Applicants' estimates of the costs and savings associated with this merger" could be presented. Instead, the Joint Applicants warmed over their old testimony. Samuelson summarized the frustration of the various Intervenors in developing certain and precise calculations with respect to savings:

> Upon reflection, I can see how the California PUC had to rely upon its own computations on this issue. Given the almost impossible task of identifying, determining and tracing possible merger savings, and the difficulty of determining the time period over which the various components of savings will be realized before the achievement of a competitive marketplace for the various customer markets served by SBC/Ameritech, I think it is inevitable that the Commission will have to arrive at an order of magnitude estimate. The starting point for that estimate is $1.4 billion in annual savings over the Ameritech service area, with no certain end date when marketplace forces will distribute the savings to customers in the form of lower rates, particularly as to the residential, "disadvantaged" and small business markets.
>
> . . .
>
> I think that net savings of $100 million a year for five years would be a reasonable solution. It is close to the number that would result from multiplying the $1.4 billion of overall Ameritech savings by the 8.75% reflecting the Illinois/regulated percentage of overall revenue. It is also comparable to the California numbers.

(Samuelson Reopening Direct at 27-28.)

B. Given The $13.2 Billion Premium Provided To The Ameritech Shareholders In This Merger, 100% Of The Savings Should Go To Ratepayers.

There are two reasons for allocating merger savings to ratepayers. First, for most of Ameritech's long history, it was a regulated monopoly, a "rate-of-return" company. (Samuelson Reopening Direct at 29.) A great deal of its current marketplace value – the $13.2

billion premium to be paid by SBC for Ameritech stock – was created during times when customers agreed to pay rates which provided almost guaranteed returns. (Id.) Its current value was not created out of successful competition, superior management, creativity or entrepreneurial skill: the shareholders were merely in the right place at the right time. (Id.) Therefore, the presumption should favor all of the savings going to the ratepayers, with the burden being to show otherwise. (Id.)

Second, there will be a "lag" between the time that savings are realized by SBC/Ameritech and the time that ratepayers realize the combination of lower prices and superior service that will result from the new unregulated marketplace. (Id.) There will be some period of time when rates will be in place, based upon earlier assumed costs that will be modified by the merger, and SBC/Ameritech will be experiencing merger savings. The merger savings should be used to compensate those ratepayers who will not be experiencing the benefits of competition during this time period. (Id.)

C. At Least One Third Of The Merger Savings Should Go To Underserved Communities In Illinois Through Community Technology Fund Programs.

All of the savings from this merger should not be returned to ratepayers in the form of tiny sur-credits on telephone bills for two reasons. First, as explained above, almost 10% of the Illinois market is without phone service. Many of these individuals were former ratepayers, who were unable to pay their phone bills. Many are potential ratepayers who could have phone service if the Linkup and Lifeline programs were better promoted in Illinois. So credits on phone bills are not going to help these former, and prospective, ratepayers.

Second, the selection and use of telecom services is becoming a very sophisticated process. Many consumers are unaware of the rapidly increasing costs of operator assisted services, information, collect and interrupt services – the "competitive" services. (Tr.

447-48, 454 (Kahan, January 25, 1999).) The “cost” of inadvertently using extravagantly expensive unregulated “extras” (formerly basic) services would dwarf the quarter-a-month credit. Underserved markets are particularly vulnerable to making poor purchasing decisions with respect to telecom services, because of their lack of experience with these services, and with the absence of competitors explaining why their services are different, better, cheaper or more appropriate. (Samuelson Reopening Direct at 15; Tr. 448 (Kahan Cross).)

California chose a more reasonable alternative. In California, one third of the savings ($82 million out of $250 million) was allocated to the California Community Partnership, a fund to be used to determine and support the telecommunications needs of underserved communities. (Tr. 2013 (Kahan Cross).) Similarly, one third of the savings from this merger should be allocated to an Illinois Community Technology Fund to address market failures that will result from the merger in “underserved” markets. The money to fund these programs would come from merger savings, whether allocated to the ratepayers or shareholders. Instead of “charitable” programs as suggested by the funding levels proposed for them by SBC/Ameritech, these programs are designed to educate and aggregate demand, providing a broader customer base. (Samuelson Reopening Direct at 15-18.) These programs would benefit a significant portion of the market in Illinois -- they are not special interest programs. In California, it was estimated that 50% of the residents of California were in included in the various categories of “underserved” markets. (Samuelson Reopening Direct Ex. C at 4.) They are likely to represent a similar percentage in Illinois.

These programs will have a better effect on underserved markets than simple sur-credits. As Willis White, the chairman of the California Black Chamber of Commerce, said on behalf of underserved communities generally:

> Minorities don't want trivial 20-cent refunds; we want an empowerment and economic development fund, such as the $50 million education and technology fund proposed by Pacific Bell and community groups.

(Samuelson Reopening Direct Ex. C at 4.)

The proposed programs attack a fundamental problem with underserved markets: compensating for a lack of education as to the value and use of high-end services. For example, Mr. Kahan for the Joint Applicants testified regarding the needs or problems with "disadvantaged populations":

> I can give you one. I believe they're the penetration of basic telephony service is lower in those communities, number one. So they don't have access to basic service. They don't know what is available at what price. They don't know how to get it. They don't know how to order it. A lot of them have language problems.
>
> . . .
>
> There are a large group of economically disadvantaged customers who have the ability to pay, want the services, don't know how about them, don't know how to get them.

(Tr. 447-48, 454 (Kahan, January 25, 1999).)

Mr. Kahan's statements have a solid foundation. Studies of computer and online usage show that those with exposure to computers through education are more likely to use them than those who have less education. Indeed, education directly correlates with computer and online service usage. Mr. Taylor presents charts that illustrate these points. First, he observes that use of online services correlates with education:

Table 4
Households with Online Service by Education, U.S. 1997

Education	Percent
Elementary	1.8%
Some H.S.	3.1%
HS Grad or GED	9.6%
Some College	21.9%
B.A. or more	38.4%

Source: National Telecommunications and Information Administration
"Falling Through the Net II: New Data on the Digital Divide"

(Taylor Reopening Direct at 11.)

Second, Mr. Taylor observes that computer usage and ownership increase with education:

Table 8
Education and the Digital Divide – Illinois Adults 1994

Education	Ever Used a Computer	Own a Personal Computer
0-4 years	5%	5%
5-8 years	3%	5%
9-11 years	19%	11%
12 years, GED	34%	19%
Trade or Vocational School	50%	28%
College Classes	66%	38%
College Graduate	75%	49%
Post-graduate Classes	87%	58%
Post-graduate Degree	86%	60%

Source: MCIC Statewide Technology Survey, Autumn 1994

(Taylor Reopening Testimony at 13-14.)

Thus, providing exposure to computers and education regarding their use should help to increase use and understanding of them. The merger should be conditioned on programs designed to achieve this end.

D. In The Alternative Or In Combination, At Least One Half Of The Merger Savings Should Be Allocated As Shareholder Investments In Programs In Underserved Market Communities.

If the Commission determines that the most effective means to remedy the adverse impacts on underserved markets is for SBC/Ameritech to directly expand their business investments in underserved markets and market communities, as an alternative to or in combination with allocations of savings to an Illinois Community Technology Fund, one half the savings should be allocated to shareholders for a program of targeted investments to be developed and approved by the Commission.

E. The Commission Should Not Wait To Fund Programs.

As explained above, this Commission should set conditions for the merger that encourage early movement into underserved markets. To that end, the only sensible approach is to use estimated savings figures and immediately fund programs to ensure widespread competition and education of underserved markets. In Illinois today, there are hundreds of thousands of residents without telephone service, and there is a significant "digital divide" in the use of telecommunications services that is widening. Waiting to determine and allocate savings in the summer of 2001 will only allow the digital divide to widen further. Program assistance is needed now, not two years from now.

The best approach, then, is to allocate estimated payments of $20 million per year to be applied against one third of the actual savings when they are determined. If the savings numbers turn out to be $100 million per year, one third of the savings would be $33 million, and the payment of $20 million would be deducted from that amount, and the remainder added to the Illinois Community Technology Fund. As explained above, programs are needed immediately, and this approach will help stimulate demand for competitive services and stop the growth of the number of people who lack competitive service or telephone service at all. And it will create better trained, more skilled, and more valuable workers for the economy in Illinois.

F. The Commission Should Adopt Recommended Programs.

DSSA/NLN recommend the following programs, which are modeled after and take advantage of other programs previously developed for assisting underserved communities. Greater detail on these programs is provided in Don Samuelson's direct testimony on reopening and his July 6, 1999 testimony. For ease of understanding, these programs are summarized here.

- Education for underserved markets. This part of the program requires market research to identify underserved areas of the overall market, review of information from other similar programs, and advertising to underserved markets to stimulate demand. (Samuelson Reopening Direct at 15-18.)

- Funding and Establishment of Demonstration Community Technology Programs. The idea behind this part of the program is to provide funding for programs that can demonstrate practical uses of new communication technologies in underserved markets. This part of the program is modeled after the Department of Commerce's Telecommunications and Information Infrastructure Assistance Program, which is described in Exhibit F to Samuelson's Reopening Direct testimony. (Samuelson Reopening Direct at 18-20.)

- Creation of Community Technology Centers. This part of the program would establish centers in areas determined to be significantly underserved to educate the people and businesses regarding the use of new communications technologies. (Samuelson Reopening Direct at 20-23.)

- Location of National/Local Subsidiaries in Illinois. The fourth part of this recommended program is to condition the merger on the location of subsidiaries for the National-Local strategy in Illinois. This program recommends three subsidiaries be located here: the headquarters of the National/Local strategy, which will compete for business outside of its usual areas according to a defined program; a separate affiliate for advanced services as proposed by the FCC; and a company to commercialize the opportunities to develop products and services for underserved markets. (Samuelson Reopening Direct at 24-25.)

These programs are modeled after other programs that are in place, are operating, and have a track record, so adopting them would be easy and would draw upon the efforts of those who have already designed and operated similar programs.

IV. NLN/DSSA's Recommended Language For Conditions In Proposed Order

For the reasons described above, DSSA/NLN recommend the following revisions to the proposed conditions now set forth in the PEPO. Modifications that are additions are underlined.

<u>Substitute Conditions</u>

J. Conditions To the Approval of the Proposed Reorganization.

(1) Headquarters – SBC will maintain Ameritech's headquarters in Chicago and state headquarters in each of Ameritech's traditional states.

<u>(1.a) Subsidiary headquarters – SBC will discuss with the Governor and Mayor in good faith the terms and conditions under which subsidiaries at SBC might be located in Illinois. These subsidiaries should include the operating units responsible for: a) the design and implementation of the National/Local strategy; b) the provision of advanced services (such as ADSL) in the 13-State area where SBL/Ameritech operates as an incumbent LEC; and c) the commercial development of telecommunication products and services for undeserved markets.</u>

(2) Name – No recommendation.

(3) Charitable Contributions – SBC will continue Ameritech Illinois' historic levels of charitable contributions and community activities and will continue to support economic development and education consistent with AI's established commitments. <u>Prior to the issuance of a final order, SBC will submit a baseline report of financial, in-kind, staff and volunteer time and activities currently supported by AI, and a future commitment report and plan for each such element, adjusted to maintain or increase current effort in inflation adjusted terms, along with commitments by SBC in its charitable, corporate and community affairs, staff and volunteer interaction with AI to support such commitments.</u>

(4) Development – SBC will continue to support economic development and education in Ameritech's region consistent with Ameritech Illinois' well established commitments in these areas. <u>In addition, SBC will support community development and telecommunications-computer-technology skill building activities of public agencies, nonprofit social service agencies and community-based learning, technology and design centers of the kind supported by SBC and Pacific Telesis in the California Community</u>

Partnership, and SBC/Ameritech in Ohio, through the creation and funding of a five-year Illinois Community Technology Fund to be created under this order.

(4.a) The Illinois Community Technology Fund – The purposes and structures of the Fund are described in the Direct Testimony on Reopening of Don S. Samuelson, July 6, 1999 at pages 14-24. The detailed structure and operation of the programs supported by the Fund will be adopted from the models described in Exhibits in Support of Direct Testimony on Reopening of Don S. Samuelson, July 6, 1999 at Exhibits D (California Community Partnership Agreement) E (Report on the Implementation of the Ohio Community Computer Center Commitment in the Ameritech Alternative Regulation Settlement), F (the U.S. Department of Commerce Telecommunication and Information Infrastructure Assistance Program), and G (the U.S. Department of Education Community Technology Centers Program).

(4.b) Funding of Illinois Community Technology Fund – SBC/Ameritech shall provide funding for the Fund at the greater of $20 million per year for three years, or one third of the projected or actual savings determined or agreed to by the Commission during whatever time periods the savings are deemed to be realized.

(5) Employment – SBC will ensure that, as a result of the proposed reorganization, employment levels in Ameritech region will not be reduced due to this transaction. In addition, prior to the issuance of a final order, SBC will submit for Commission approval a report including commitments to the establishments of new subsidiaries and new activities, including the numbers, kinds, locations and timetable of jobs to be created as a result of SBC business plans, and AI business plans, along with similar reports on job reductions and unfilled positions, including a report on any such changes in management positions at Ameritech headquarters and in AI , including in community, small business and external relations programs and units, and programs interacting with or supporting the Illinois Community Technology Fund.

(6) Investment – SBC will continue to invest capital necessary to support AI's network consistent with Ameritech's past practices, SBC's or Ameritech's relative competitive technology standing, and SBC's or Ameritech's commitments to FCC for business and residential infrastructure improvements, whichever is greatest, and complete its five year infrastructure network modernization program of $30 billion as previously required of AI in our Alt. Reg. Order, and any such amounts as may be determined by the Commission on a year to year basis to be necessary to meet such commitments. Further, AI will identify, for each reported investment which of its services and products benefit from the investments and will also identify the area in which the investment is made.

(7) OOSS Reports – No recommendation.

(8) LRSIC & TELRIC – No recommendation

(9) Cellular Divestiture – No recommendation

(10) Cellular Notification – No recommendation

(11) Service – The Joint Applicants agree that Ameritech Illinois will advise Staff of any changes to its 911 service, including staffing as they occur. AI will include in annual reports on infrastructure investment or service quality or performance compliance, feedback from local public bodies, and from any formal local, statewide or Ameritech regionwide planning or review assembly which includes a significant focus on matters related to 911 service or staffing, including in practical map and recommendation for action by the Commission or provision of inexpensive and understandable information to the public about vital services.

(12) Access – No recommendation

(13) CAM -- No recommendation

(14) TRI – The Joint Applicants agree to use Technology Resources, Inc. ("TRI") to work on accessibility issues in Illinois. TRI shall cooperate with and provide assistance and support to the Illinois Community Technology Fund with respect to all undeserved communities.

(15) Universal Design – No recommendation

(16) "Best Practices" Report – The Joint Applicants agree that AI will provide, for a period up to five years after consummation of the merger, an annual report in which it identifies any proposed "best practice" whose adoption by SBC or its affiliates would affect the provisioning of intrastate telecommunications in Illinois. The Joint Applicants will work closely with the Illinois Community Technology Fund in conducting research and analysis to understand related "best practices" which affected undeserved or disadvantaged markets, and to review efficient strategies to test or commercialize them, or to include them in expansion of telephone service or telecommunication availability and skill familiarity to build comfort levels for new customers or customers for new services in private and public settings.

(17) OOS>24 Hour Performance – We require Joint Applicants to correct the OSS>24 hour performance as hereinafter set forth.

While a noncompliance penalty structure was outlined in the Plan, and has been enforced continuously, this punitive measure has not proved sufficient incentive for AI to cure the problem.

It is an express condition to our approval that within 90 days from the final regulatory approval, AI provide the Commission and Staff with a written commitment and plan detailing the steps it will undertake to remedy the problem together with a timeline that includes a date certain for completion.

A review of OSS>24 hour performance data and plans shall be included in any local or other formal review of service quality, and results of such local or other feedback or formal analysis session shall be included in the annual report of service quality.

(18) Rule to Show Cause in Alt. Reg. Plan – No recommendation

(19) Savings – Joint Applicants shall be responsible for defining, describing and detailing a system for recording all savings and all costs relating to the generation of those savings in a clear and unambiguous manner satisfactory to the Commission prior to the approval of this merger; or in the alternative, in projected amounts and time periods which are agreed upon prior to the approval of the merger by SBC/Ameritech and the Commission. Projected savings should be allocated on a quarterly basis during the year for which they are applicable. All of the savings "determined" or "agreed to" by the Commission shall go to ratepayers in the form of credits. One third of the savings to ratepayers shall be allocated to the Illinois Community Technology Fund. *[In the alternative:] half of the savings will be allocated to shareholders on the condition that two thirds of the half be allocated to the Illinois Community Technology Fund.*

(20) Residential and Basic Service Rate Caps – No recommendation

(21) Equality of Customer Service – The Joint Applicants have agreed to work with Staff to fashion a commitment reflecting the provision of equal types of service for all service groups. We require that this cooperative effort begin within 150 days of the final regulatory approval and that we be apprized of the end result of this effort. We require that this cooperative effort include collaborative processes involving Government and Consumer Intervenors, and that a report of the relevant portions of this effort be presented formally in the annual reports on infrastructure investment and service quality.

(22) AI Regulatory Staff – No recommendation.

(23) Costs of Uncompensated Consumer Intervenors – In light of the requests by the Commission that the Joint Applicants substantially expand their information to document means to prevent or lessen any adverse impacts on markets in Illinois based on extensive presentations and filings by Consumer Intervenors, including Neighborhood Learning Networks, DSSA and others, whose legal representations are reflected in substantial modifications of conditions and orders of the Commission, and which interests do not have the benefit of compensated legal and related support, the Commission shall require the Joint Applicants to make provision for the payment of amounts not to exceed $200,000 for legal work by lawyers other than Don S. Samuelson for prior to final regulatory approval, based on the submission of time and expense reports, and at rates no more than 50 percent of regular billing rates, and subject to review and recommendation to the Commission for the approval of any such amounts.

(24) Notification Date of Acceptance of Conditions. No later than _____, the Joint Applicants shall notify the Commission pursuant to the provisions of Section 10-112 that the terms, conditions and requirements set out above are accepted and obeyed.

III. Findings and Ordering Paragraphs

No recommendations are made, except to replace paragraph (8) and substitute the following:

(8) <u>the provisions of Section 7-204(c) are being applied to the reorganization, so that 100% at the net merger-related savings allocable to Illinois regulated services will be allocated to Illinois ratepayers in the manner described earlier in Condition #10.</u>

CONCLUSION

This Commission has an opportunity to stop the rapidly growing digital divide in Illinois. The Joint Applicants have not shown that this merger will not have adverse effects on underserved markets. By imposing conditions on the merger designed to mitigate the effects of these failures, this Commission will have taken a positive step in the right direction. DSSA/NLN request that the Commission take steps now, while it has the opportunity, so that Illinois may bridge the digital divide.

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